IN THE COURT OF APPEALS OF IOWA

No. 2-1003 / 12-0357
Filed January 9, 2013

JOHN DOE,
Plaintiff-Appellant,

vs.

UNIVERSITY OF IOWA,
Defendant-Appellee,

and

THE ASSOCIATED PRESS,
Intervenor.

Appeal from the Iowa District Court for Johnson County, Thomas G. Reidel, Judge.

Plaintiff appeals the district court decision finding an employment-related agreement between himself and the University of Iowa was a public record, subject to inspection and copying. **AFFIRMED AND REMANDED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Iowa Attorney General, and Jordan Esbrook, Assistant Attorney General, for appellee.

Michael A. Giudicessi of Faegre Baker Daniels LLP, Des Moines, for intervenor.

Heard by Potterfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

John Doe appeals from a district court ruling ordering the release of a settlement agreement between Doe and the University of Iowa. Doe was an employee of the University at the time the parties entered into the agreement. Doe asserts the settlement agreement is not subject to disclosure under the Iowa Open Records law, Iowa Code chapter 22 (2011). The Associated Press and the University contend the document is a public record. Because we agree the settlement agreement is a public document, we affirm.

I. Background Facts & Proceedings

The parties entered into a stipulation concerning the facts of this case. On January 31, 2011, a correspondent with the Associated Press (AP), sent a request to the University of Iowa for copies of all settlement agreements reached between the University and faculty members from January 1, 2009, to the time of the request. The University notified plaintiff, an employee of the University, that an agreement he entered into with the University in June 2010 would be released to the AP pursuant to the request. The agreement provided that plaintiff would tender his resignation no later than June 30, 2011, and he would be paid a salary through that date, although he would receive a change in assignment. The agreement provided that it "shall remain confidential to the extent permitted by law."

On February 21, 2011, plaintiff filed a petition in equity under the name John Doe[1] seeking an injunction to restrain the examination of the document pursuant to Iowa Code section 22.8 or alternatively seeking a declaratory judgment that his agreement with the University was confidential under Iowa Code section 22.7(11), which makes confidential "[p]ersonal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts." The AP filed a request to intervene in the action, and the district court granted the request to intervene.[2] At the time of trial, Doe withdrew his request for injunctive relief pursuant to section 22.8.[3]

While this action was pending, the Iowa legislature amended section 22.7(11), effective May 12, 2011. 2011 Iowa Acts ch. 106, § 10, § 17. The amendment specified information in personnel records that would be considered public records.[4] *Id.* § 10. Based on the amendment, the AP filed a renewed request for a copy of the agreement on August 1, 2011.

---

[1] Plaintiff asserted that the use of his real name would disclose information that this action was seeking to keep confidential.

[2] The AP filed a counterclaim against the University asserting it had violated chapter 22 by not releasing a copy of the agreement. The University filed a motion to bifurcate the proceedings, asking for a separate hearing on the issue of whether the University's conduct violated the statute, thereby causing it to be liable for damages and attorney fees. The district court granted the motion to bifurcate. In its ruling on the present matter the court directed counsel for the AP and the University to schedule a hearing on the matter that had been bifurcated.

[3] The AP orally argued that Doe's petition was only premised upon section 22.8 injunctive relief. However, the district court did not so narrowly interpret Doe's allegations and the relief sought in the petition, and we agree. It is also clear that the issue of whether the document was confidential under section 22.7(11) was tried by consent of the parties. *See Dutcher v. Randall Foods*, 546 N.W.2d 889, 893 (Iowa 1996).

[4] The amended statute provides that certain personal information in confidential personnel records is a public record which should be disclosed, including: (1) the name and compensation of the individual; (2) the dates the individual was employed by the

The district court issued a ruling on February 23, 2012, determining that the agreement was not confidential under section 22.7(11). The court considered several factors and concluded the agreement was a settlement agreement that was intended to settle all disputes between the parties.[5] The court relied upon *Des Moines Independent Community School District Public Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, 669 (Iowa 1992), which held settlement agreements with public bodies were subject to disclosure. The court conducted a balancing test to weigh plaintiff's individual privacy interests against the public's right to the information, and concluded the agreement should be disclosed. The court specifically did not address the recent amendment to section 22.7(11). Plaintiff appeals the decision of the district court.[6]

II. Standard of Review

This case was filed in equity, and thus our review is de novo. Iowa R. App. P. 6.907; *Iowa Film Prod. Servs. v. Iowa Dep't of Econ. Dev.*, 818 N.W.2d

---

government body; (3) the positions the individual held; (4) the educational institutions attended and names of previous employers; and (5) whether the person was discharged as a result of disciplinary action. 2011 Iowa Acts ch. 106, § 10.

[5] The court noted the following indicia showed the agreement was a settlement agreement: (1) the document was titled "Settlement Agreement and General Release"; (2) the agreement stated the parties wished to resolve all matters relating to plaintiff's employment with the University; (3) plaintiff's level of compensation and benefits were maintained despite a change in assignment; (4) plaintiff would be paid $100,000 if he re-signed before January 1, 2011; (5) there was no admission of wrongdoing by plaintiff; (6) all parties were prohibited from making disparaging comments; (7) plaintiff released all claims of liability against the University and State of Iowa; (8) plaintiff was deemed to have made an investigation of his claims; (9) the University discharged plaintiff from all liability within the scope of his employment; (10) the parties agreed to utilize a mutually acceptable letter of reference; and (11) they agreed to execute a general release on the effective date of plaintiff's resignation.

[6] The Iowa Supreme Court granted plaintiff's motion for a stay of the district court's order pending resolution of this appeal.

207, 217 (Iowa 2012). "Our review of the district court's application of section 22.7 to the undisputed facts shown in the record before it is de novo." *DeLaMater v. Marion Civil Serv. Comm'n*, 554 N.W.2d 875, 878 (Iowa 1996). We review the district court's interpretation of chapter 22, however, for the correction of errors at law. *Iowa Film*, 818 N.W.2d at 217. A party seeking the protection of an exception in section 22.7 has the burden of demonstrating the applicability of that exception. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999).

III. Merits

A. The Open Records Act.

Iowa's open records law for government bodies is found in chapter 22. The purpose of the statute is "to remedy unnecessary secrecy in conducting the public's business." *Am. Civil Liberties Union Found. of Iowa, Inc. v. Records Custodian, Atlantic Cmty. Sch. Dist.*, 818 N.W.2d 231, 232 (Iowa 2012). "Iowa's 'open records' act invites public scrutiny of the government's work, recognizing that its activities should be open to the public on whose behalf it acts." *Clymer*, 601 N.W.2d at 45.

Under the statute, "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." Iowa Code § 22.2(1). Thus, disclosure is the general rule under the open records law. *See Clymer*, 601 N.W.2d at 45. The statute also lists public records that a government body should keep confidential. Iowa Code § 22.7. "[T]he legislature intended for the disclosure

requirement to be interpreted broadly, and for the confidentiality exception to be interpreted narrowly." *Des Moines Indep. Cmty. Sch. Dist.*, 487 N.W.2d at 669. We do not apply the narrow-construction rule, however, if the legislature has used broadly inclusive language in the exception. *DeLaMater*, 554 N.W.2d at 878. Through chapter 22, the legislature has set the limitations on disclosure of public records, and we therefore must construe the statute "to determine whether the requested information is subject to disclosure." *Am. Civil Liberties Union Found.*, 818 N.W.2d at 232.

B. Section 22.7(11) Exception.

This case involves the exception for "[p]ersonal information in confidential personnel records of public bodies" found in section 22.7(11), which the Iowa Supreme Court recently discussed as follows:

> [T]o determine if requested information is exempt under section 22.7(11), we must first determine whether the information fits into the category of "[p]ersonal information in confidential personnel records." We do this by looking at the language of the statute, our prior caselaw, and caselaw from other states. If we conclude the information fits into this category, then our inquiry ends. If it does not, we will then apply the balancing test under our present analytical framework.

Id. at 235.

Section 22.7(11) has been found to prohibit the disclosure of disciplinary records of a public employee. *Am. Civil Liberties Union Found.*, 818 N.W.2d at 236. Also, information about public employees' use of sick leave and vacation should be released, but not information about their addresses, birth dates, and gender. *Clymer*, 610 N.W.2d at 48. While the scores of applicants' civil service examinations should be disclosed, the information linking the names of

applicants to specific scores is confidential under the statute. *DeLaMater*, 554 N.W.2d at 881-82. Furthermore, "in-house, job performance documents" are exempt from disclosure under section 22.7(11). *Des Moines Indep. Cmty. Sch. Dist.* 487 N.W.2d at 670.[7]

The issue of the applicability of section 22.7(11) to a settlement agreement between a government body and an employee was addressed in *Des Moines Independent Community School District*. In that case a principal had filed a complaint against the school district with the Iowa Civil Rights Commission, and the school district was investigating complaints against the principal. *Id.* at 668. The principal and the school district entered into a settlement agreement, and a newspaper requested disclosure of that agreement. *Id.* The Iowa Supreme Court stated:

> The written settlement agreement, like most items in dispute, possesses some ingredients of both a purely public nature and also of a personal matter the legislature has designated as confidential. But the outstanding characteristic of the settlement agreement was the fact that public funds were being paid to settle a private dispute. We think the document was of the type the legislature designated for disclosure.

Id. at 669.

The court also observed:

> Courts have generally held that settlement agreements with public bodies are subject to disclosure. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191, 1193 (Alaska 1989) (terms of settlement with public agency may not be kept confidential);

---

[7] In considering an earlier version of section 22.7(11), the Iowa Supreme Court had held that the names and personal information of applicants for a public position could be released. *City of Dubuque v. Tel. Herald, Inc.*, 297 N.W.2d 523, 527 (Iowa 1980). This decision was later overruled by statute. *See* Iowa Code § 22.7(18); *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 897 (Iowa 1988).

> *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682, 684-85 (Colo. App. 1990) (disclosure of settlement agreement proper even though contained in personnel file); *Guy Gannet Publishing Co. v. University of Maine*, 555 A.2d 470, 472 (Me. 1989) (settlement agreement was not protected from disclosure); *Librach v. Cooper*, 778 S.W.2d 351, 356 (Mo. Ct. App. 1989) (settlement agreement was subject to disclosure).

Id. The court concluded the settlement agreement was not exempt from disclosure under section 22.7(11). *Id*. at 670.

After considering the language of section 22.7(11) and applicable caselaw, we conclude the agreement in this case does not fit cleanly within the category of "[p]ersonal information in confidential personnel records," which is exempted from disclosure under the statute. The agreement does not come within the category of information that courts have found the legislature intended to be kept confidential under the statute, such as employee addresses and birth dates, disciplinary records, or in-house job performance documents. The agreement is clearly much more closely aligned with the settlement agreement that was determined to be subject to disclosure in *Des Moines Independent School District*, 487 N.W.2d at 670.

As noted, our supreme court concluded that if the information sought to be disclosed fits into the category provided in section 22.7(11) our inquiry concludes and the balancing test need not be applied. *Am. Civil Liberties Union Found.*, 818 N.W.2d at 235. The AP argues that where the document is at the other end of the spectrum and clearly does not fit into the category that the same logic should apply and no balancing of interests is necessary. The AP relies upon *Des Moines Independent School District*, 487 N.W.2d at 670, as precedent to support

that the settlement agreement clearly does not fall within the confines of section 22.7(11). We would agree that by the sheer force of stare decisis provided by *Des Moines Independent School District*, our analysis could conclude. However, in the event of some fallacy in this logic, we like the district court, will apply the balancing test. *See Am. Civil Liberties Union Found.*, 818 N.W.2d at 235.

C. Application of Balancing Test.

A balancing test weighs an individual's privacy interests against the public's need to know. *Clymer*, 601 N.W.2d at 45. The balancing test commonly used considers the following factors: (1) the public purpose of the party requesting the information; (2) whether the purpose could be accomplished without the disclosure of personal information; (3) the scope of the request; (4) whether alternative sources for obtaining the information exists; and (5) the gravity of the invasion of personal privacy. *DeLaMater*, 554 N.W.2d at 879. Whether information should remain confidential under this test is dependent upon the specific facts of each case. *Id.*

We will consider each of these five factors in turn, beginning with the first factor. The district court found the AP's purpose in requesting the information was "to determine whether to use said information in the formation of news articles that may educate the public on the manner within which public funds are being used to settle disputes" with University faculty members. Like the settlement agreement considered in *Des Moines Independent School District*, 487 N.W.2d at 699, the AP's purpose was to determine whether public funds were being paid to settle a private dispute. The public has a right to know how its

money is spent. *Clymer*, 601 N.W.2d at 47. This factor weighs in favor of disclosure.

Considering the second factor, the court found the AP's purpose to inform the public about whether public funds were used to settle disputes with faculty members could not be accomplished without the disclosure of the agreement, and we agree. This factor then favors disclosure.

In the third factor, the scope of the request was fairly limited to the types of agreements involved in this case. The AP submitted exhibits showing it received copies of five other settlement agreements from the University in response to its request. A narrow or limited request generally weighs in favor of disclosure. *Am. Civil Liberties Union Found.*, 818 N.W.2d 243 (Cady, C.J., dissenting).

For the fourth factor, there is no indication in the record that alternative sources for obtaining this information exist outside of testimony from the parties involved. We conclude this factor favors protecting the individual privacy rights of plaintiff. *See id.*

Plaintiff's main arguments concern the last factor, "the gravity of the invasion of personal privacy." *See Clymer*, 601 N.W.2d at 45. He points out that the agreement provided it "shall remain confidential to the extent permitted by law," and argues the parties intended for the agreement to remain confidential. He also points out that at the time of the request for disclosure he was still employed by the University, and that provisions in the agreement may affect his relationships with his current co-employees and his ability to obtain future employment.

The agreement for confidentiality was "to the extent permitted by law," thereby implicitly stating that no greater confidentiality than that permitted by the open records law was intended by the parties. We note that information may be disclosed under the statute even though it "may cause inconvenience or embarrassment to public officials or others." Iowa Code § 22.8(3); *Clymer*, 601 N.W.2d at 48. We conclude the gravity of the invasion into plaintiff's personal privacy does not exceed the public's interest in the use of public funds.

D. Conclusion.

In our de novo review and in applying section 22.7(11) to the undisputed facts shown in the record, we determine the district court properly applied the balancing test and concluded the agreement was not exempt from disclosure. *See DeLaMater*, 554 N.W.2d at 878 (discussing standard of review). We agree with the court's decision that the University should be ordered to release the agreement to the AP.

Because, like the district court, we have determined the agreement should be disclosed under section 22.7(11) as the statute existed prior to the amendment in 2011, we do not further discuss the issue in light of the amended statute, or address an issue of whether the amended statute should be applied retroactively.[8]

---

[8] Without a ruling on the applicability of the amended statute error has not been preserved. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

We affirm the decision of the district court, and remand for further proceedings before the district court, if any are necessary.

AFFIRMED AND REMANDED.